



MCCARTY & RABURN
A CONSUMER LAW FIRM PLLC

DENNIS D. MCCARTY
ATTORNEY AT LAW
DENNIS@MYCREDITATTORNEY.COM

JONATHAN F. RABURN
ATTORNEY AT LAW
JONATHAN@MYCREDITATTORNEY.COM

LICENSED IN MISSISSIPPI
U.S. DISTRICT COURTS, NORTHERN, SOUTHERN, WESTERN, EASTERN
DIVISION OF TEXAS
U.S. DISTRICT COURTS, NORTHERN, SOUTHERN DIVISION OF MISSISSIPPI
5TH CIRCUIT COURT OF APPEAL
UNITED STATES SUPREME COURT

LICENSED IN LOUISIANA
U.S. DISTRICT COURTS, WESTERN, MIDDLE AND EASTERN
DISTRICTS OF LOUISIANA
FEDERAL COURTS OF COLORADO
5TH CIRCUIT COURT OF APPEALS

WWW.MYCREDITATTORNEY.COM

November 6, 2018

Susan Gram
Case Manager to Judge George C. Hanks, Jr.
United States Courthouse
601 Rosenberg, Room 411
Galveston, TX 77550

galveston_cm@txs.uscourts.gov

RE: *Clements, et al v. Trans Union, et al ; Cause No. 3 :17-cv-237*

Dear Ms. Gram:

Plaintiffs request a phone conference be scheduled with the Honorable District Court Judge Hanks at his earliest convenience regarding a discovery dispute between Experian, Trans Union and TXU.

Plaintiffs, individually and for the purported class, filed a federal class action complaint against Experian, Trans Union and TXU for violating the Fair Credit Reporting Act(FCRA). Specifically, Plaintiffs and purported class allege that Defendants Trans Union and Experian violated 15 U.S.C. § 1681c(a)(4) by reporting a derogatory account for longer than the FCRA allows. In addition, Plaintiffs and purported class allege that Defendant Experian and Trans Union violated 15 U.S.C. § 1681e(a) by failing to maintain reasonable procedures designed to avoid violations of 1681(c), reporting old derogatory accounts. Plaintiffs and the purported class allege that Defendants Experian and Trans Union violated 15 U.S.C. § 1681e(b) by failing to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates. Plaintiffs and the purported class allege that Defendant TXU violated 15 U.S.C. §1681s-2(b) by failing to conduct a reasonable investigation into Plaintiffs' disputes. Plaintiffs and the purported class allege that TXU,

3000 CUSTER ROAD, SUITE 270 # 1501 | PLANO, TX 75075

National Toll Free: (877) 994-3289; Baton Rouge: (225) 412-2777; Dallas: (214) 296-9240; Miami: (305) 507-9200; Atlanta: (678) 935-7424; Philadelphia: (610) 968-1133 Tyler: (214) 296-9240

Experian and Trans Union violated sections of the FCRA willfully and/or negligently pursuant to 15 U.S.C. §1681n and §1681o.

Plaintiffs have received the number that they intend to use to certify a class against Experian. Plaintiffs were informed by Trans Union that they will provide the number that Plaintiffs intend to use to certify a class against Trans Union, but that number has not been provided yet.

Plaintiffs allege that TXU has provided Trans Union and Experian the date that each Plaintiff made their last payment to TXU, as evidenced by Trans Union reporting the last payment date on each of their credit reports/credit disclosures. Each of the Plaintiffs' last payment dates to TXU far exceeds the maximum of seven and one half years allowed for Experian and Trans Union to report the derogatory accounts. Plaintiffs' position is that the first date of delinquency is the first month that the Plaintiffs missed their last payment, hence the term, first date of delinquency. The first date of delinquency, which is when the time the clock is supposed to start when reporting derogatory accounts, would be the first month after their last payment date. Experian and Trans Union's position is that TXU is providing a first date of delinquency years after the last payment was made to TXU, which is impossible. TXU sent, and Experian and Trans Union are reporting old and obsolete TXU accounts with last payment dates in various months in 2009, and their accounts are still reporting, nine years later. Because TXU is providing first delinquency dates that are, in most cases, several years off from when the Plaintiffs made their last payments, the only true and clear way of calculating the first date of delinquency is to use the first/next month after the last payment date.

Plaintiffs' have alleged on their behalf and that of the class that they properly disputed the TXU accounts pursuant to the FCRA and that TXU did not conduct a reasonable investigation, delete or block the accounts from reporting. Instead, TXU instructed Trans Union and Experian to continue reporting the accounts, which they did, violating 15 U.S.C. §1681s-2(b). The only way to accurately determine the class size against TXU is to determine the number of consumers that disputed their accounts and the TXU instructed Experian and Trans Union to continue to report, out of the number that Experian has already provided to Plaintiffs and the number that Trans Union has stated that they soon will. TXU has informed Plaintiffs that they do not keep or maintain the documents that would provide that information. When a consumer disputes a TXU account with Trans Union and Experian, Trans Union and Experian sends an ACDV to TXU informing and notifying them of the dispute. TXU then sends the ACDV back to Trans Union and Experian with instructions on how to report, change, modify, edit or delete the account. The ACDVs contain the information needed to determine the number and size of a class against TXU. TXU has stated that they do not keep or maintain the ACDVs after 120 days from when the consumer disputes the account. However, Trans Union and Experian do keep and maintain their copies of the ACDVs and can provide Plaintiffs with the number needed to certify a class against TXU. Experian and Trans Union can determine how many consumers disputed their TXU accounts and continued to report them, at the instruction of TXU.

3000 CUSTER ROAD, SUITE 270 # 1501 | PLANO, TX 75075

National Toll Free: (877) 994-3289; Baton Rouge: (225) 412-2777; Dallas: (214) 296-9240; Miami: (305) 507-9200; Atlanta: (678) 935-7424; Philadelphia: (610) 968-1133 Tyler: (214) 296-9240

Plaintiffs respectfully request this Honorable Court to compel TXU, Experian and Trans Union to work together and provide the information needed to certify a class against TXU.

Dated: November 6, 2018

Respectfully Submitted,

/s/Dennis McCarty

Dennis McCarty
McCarty & Raburn, A Consumer Law Firm, PLLC
Mississippi Bar No. 102733
Supreme Court of the United States Bar No. 302174
Federal Bar No. 993800
P.O. Box 1448
Cedar Hill, TX 75106-1448
Telephone: 817-704-3375
Fax (817) 887-5069

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with the Defendants' Counsel. Counsel for Experian and Trans Union have stated that they will not provide the information requested voluntarily. TXU has stated that they do not keep or maintain the documents that would provide them with the information required to certify a class, requiring the information to be obtained from Experian and Trans Union.

Dated: November 6, 2018

Respectfully submitted,

/s/ Dennis McCarty

Dennis McCarty
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorneys on record:

Defendants have not appeared in this case as of the date of this filing.

Date Signed this the 6th day of November, 2018

/s/ Dennis McCarty

DENNIS MCCARTY

MS Bar# 102733

Attorney for Plaintiff

3000 CUSTER ROAD, SUITE 270 # 1501 | PLANO, TX 75075

National Toll Free: (877) 994-3289; Baton Rouge: (225) 412-2777; Dallas: (214) 296-9240; Miami: (305) 507-9200; Atlanta: (678) 935-7424; Philadelphia: (610) 968-1133 Tyler: (214) 296-9240